IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

Crl.MC.No. 215 of 2004(B)

CC.53/2003 of JUDL. MAGISTRATE OF FIRST CLASS COURT, PATTAMBI

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PETITIONER:

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1. C.K.ABDULLA, S/O.ALAVI, CHERUMKUZHIYIL VEEDU, P.O.KONDURKARA, PALAKKAD DISTRICT.

2. P.UNNIKRISHNAN, S/O.NARAYANAN EZHUTHACHAN, PULICKKAL VEEDU, P.O.VADANAMKURUSSI, PALAKKAD DISTRICT.

BY ADV. SRI.K.RAMAKUMAR
SRI.T.RAMPRASAD UNNI

RESPONDENTS:

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1. SAJEENDRAN, S/O.JALOOR NARAYANAN, KALLADIPATA AMSOM DESOM, OTTAPPALAM TALUK.

2. STATE OF KERALA REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.T.C.GOVINDA SWAMY
SRI.K.M.ANTHRU
PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 02/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. M.C. No. 215 OF 2004 B

Dated this the 2nd day of August, 2007

O R D E R

The petitioners, who are the Vice President and Chairman respectively of the standing committee of the Ongallur Grama Panchayat and who are the accused in C.C.No.53/03 registered on the basis of Annexure-B private complaint instituted by the first respondent herein for offences punishable under sections 341 and 353 read with section 34 IPC, seek to quash the said proceedings before the JFCM, Pattambi.

2. The case of the first respondent in Annexure-B complaint filed on 30.11.2001 is as follows:-

On 21.12.2000 the complainant took charge as the part time pound keeper in the Ongallur Grama Panchayat pursuant to an order of appointment issued in his favour on that day. He marked his attendance at the Panchayat Office. At about 11 a.m., the two accused persons came to the office and directed the scoring off of attendance marked by the complainant and wrongfully restrained him and asked him to get out from that office. So saying, he was forcibly pushed out from the office and the accused was thereby

deterred from discharging his official duties.

3. The Magistrate took cognizance and registered the case as C.C.No.53/03.

4. The learned counsel appearing for the petitioners made the following submissions before me in support of this petition:-

Eventhough the first respondent was appointed on 21.12.2000 as part time pound keeper as per order dated 12.12.2000 of the Panchayat, his appointment was cancelled and the said proceedings were confirmed by the Deputy Director of Panchayats, Palakkad, as per Annexure-A proceedings pursuant to a direction of this court in O.P.No.914/03. The effect of the cancellation is that as on 21.12.2000 the first respondent had no right to style himself as the part time pound keeper. Even otherwise, it has not been shown in the complaint that his duty was in the office of the Panchayat where he had marked his attendance and, therefore, there cannot be any performance of official duty inside the office of the Panchayat. The duty of the part time pound keeper is in the pound and not in the Panchayat office. In any view of the matter, since the accused had every

reason to entertain a belief that the first respondent had no right to secure employment as part time pound keeper, they were justified in directing the scoring off of his attendance and this act is fully protected under section 250 of the Kerala Panchayat Raj Act, 1994, which reads as follows:-

> " **250. Protection of acts done in good faith** - No suit, prosecution or other legal proceedings shall lie against the President, Vice-President, any member, Secretary, any officer or employee of a Panchayat for anything which is in good faith done or purported or intended to be done in pursuance of this Act or any rule or bye-law made thereunder."

5. I am afraid that I cannot agree with the above submissions. It is true that the appointment of the first respondent complainant as part time pound keeper on 21.12.2000 was subsequently cancelled on 12.12.2002 by the Panchayat and this order was approved by the Deputy Director of Panchayats, Palakkad. But it has not been found that the order of appointment was issued without any authority or was void ab initio. Hence, the cancellation or termination will not relate back to the date of appointment. Therefore, as on 21.12.2000, he stood appointed as part time pound keeper. If so, prima facie, the accused who were

the Vice President and the Chairman of the standing committee of the Panchayat, or for that matter, any other office bearer had no right to object to the first respondent marking his attendance in the attendance register or performing his duty as pound keeper. A further question as to whether the duties of the first respondent/complainant at the relevant time, was confirmed only to the pound and would not extend to the Panchayat office, is a matter which has to be decided after trial. Similarly, whether the accused had wrongfully restrained the complainant or had deterred him from discharging his official duties, etc. are all matters to be decided after trial. I see no ground to quash the complaint. The proceedings initiated as C.C. No.53/03 shall, therefore, be proceeded with in accordance with law and shall be disposed of by the Magistrate bearing in mind that this is a relatively old case which should engage the attention of the Magistrate on a priority basis.

This Crl. M.C. is accordingly dismissed.

(V. RAMKUMAR, JUDGE)

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